

Congress of the United States

Washington, DC 20515

March 4, 2002

The Honorable Tommy G. Thompson
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Janet Rehnquist
Inspector General
Department of Health and Human Services
330 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Thompson and Inspector General Rehnquist:

We are writing to urge you to halt a growing national problem of physicians overcharging senior citizens in the Medicare program. These physicians have set up "exclusive" or "premium" practices that require each patient to pay a substantial annual fee. The doctors then continue to bill Medicare for most office visits. These charges appear to undermine the beneficiary protections of existing law.

As you know, under the Social Security Act, physicians receive Medicare reimbursement only by agreeing to accept the program's rates as payment in full or by limiting additional charges to 15% of the Medicare rate. Those doctors who wish to charge more must "opt out" of Medicare altogether. Under the law, doctors can either qualify for Medicare reimbursement *or* charge excessive fees.

Increasingly, however, groups of physicians around the country are attempting to have it both ways. One Florida company, called MDVIP, is affiliated with several physician practices that require each patient to pay \$1,500 annually. MDVIP has stated plans to enlist 1,000 physicians within three to five years in states that include California, Illinois, and Texas.

We have obtained MDVIP's promotional materials and agreement with patients (Attachments 1 and 2). In reviewing these materials, we have identified two potential violations of the law. First, the annual fee appears to violate limits on patient charges set by Medicare law. Second, the claims filed by MDVIP physicians appear to understate the true charges to patients, implicating the False Claims Act.

It is our understanding that while these arrangements are under review by the Department of Health and Human Services, no decision on their legality has been reached and no deadline for a decision has been set. Further delay will only encourage the spread of these practices, raising concerns of access and affordability in the Medicare program. We therefore urge you to direct attention to this matter and take rapid action.

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In reviewing the materials from MDVIP, we have learned some details of how the arrangement in question works. After a physician signs up with MDVIP, his or her patients soon receive a letter in the mail. In the letter, the doctor announces the creation of a new practice limited to just 600 patients. Unlike most other medical arrangements, the new practice will offer “personalized services” in exchange for an annual fee. Even more unusual, both the “personalized services” and the annual fee are required. Those who refuse to pay need to find new doctors. MDVIP brochures state that patients must pay \$1,500 each year for an individual and \$3,000 for a couple to continue seeing their doctor. In exchange for this payment, MDVIP promises several “amenities”:

- “ • Annual physical examination
- Comprehensive preventive healthcare plan and lifestyle planning
- Same day or next day preferred appointments
- Support personnel dedicated exclusively to members.
- Physician availability (24 X 7)
- Email/Fax access
- Prescription facilitation
- Coordination of necessary referrals
- Claims facilitation for members
- Travel medical services
- Private reception area replete with amenities.”

According to the membership agreement, MDVIP physicians continue to bill insurers for most medical visits. For Medicare beneficiaries, this means that each covered visit would be billed to the federal government the same as it would be in a non-MDVIP practice. The key difference, of course, is that MDVIP physicians require a \$1,500 fee to obtain these Medicare services.

In our view, physicians who participate in arrangements such as MDVIP and seek Medicare reimbursement appear to violate two laws. First, they charge patients more than Congress allows for covered services. Second, they routinely submit erroneous bills to the federal government.

In 1989, as part of the Omnibus Budget Reconciliation Act (OBRA), Congress legislated that “[n]o person may bill or collect an actual charge for the [Medicare] service in excess of the limiting charge.” This “limiting charge” now stands at 115% of the Medicare rate.

By conditioning the receipt of all Medicare services on an annual fee, however, “exclusive” physician practices seem to violate this law. An MDVIP patient, for example, might pay \$1,500 per year in order to see his or her doctor five times for covered services, with each visit costing an

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“exclusive” physician practices seem to violate this law. An MDVIP patient, for example, might pay \$1,500 per year in order to see his or her doctor five times for covered services, with each visit costing an additional \$100 (billed to Medicare). Looking back, the true charge for each visit, including the value of the annual fee, was really \$400. Viewed at in this light, this total expense represents a substantial and illegal overcharge of the patient.

Physicians in “exclusive” practices, including MDVIP, have claimed that their annual fee goes only to pay for services that are not covered by Medicare. However, some of these services, such as “coordination of necessary referrals,” may overlap substantially with Medicare benefits (See Attachment 3). Even absent such overlap, it is not accurate to say that the payments are solely for noncovered services. Conditioning the provision of Medicare services on the annual fee means that the patient is paying for the opportunity to receive covered benefits.

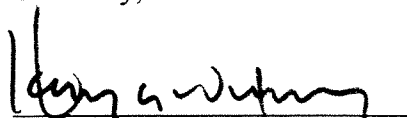
Any other statutory interpretation would render the Congressionally set limits on patient charges meaningless. If physicians can bill Medicare for a covered service and also require their patients to pay a separate fee for a noncovered service, then patients have no financial protections against overcharges. This would profoundly undermine access to care in the Medicare program.

Arrangements such as MDVIP also implicate billing laws. All participating providers in the Medicare program must agree to submit accurate claims to the program. The law is clear that physicians who knowingly submit erroneous claims violate the False Claims Act. It appears that the claims submitted by physicians in “exclusive” practices fail to include the cost of their required annual fee. In our view, these physicians may illegally be misstating the true amount charged to Medicare patients.

We urge you to take rapid action to clarify and enforce the law. You should send the message that physicians who want to charge substantial annual membership fees must opt out of the Medicare program. Such a clear statement will discourage the growth of these arrangements. By contrast, delay will leave Medicare beneficiaries without the protections that have been carefully constructed by Congress.

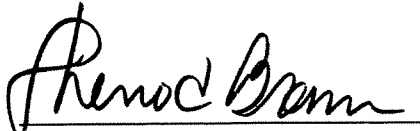
We request a reply to the concerns outlined in this letter by March 22, 2002.

Sincerely,



Henry A. Waxman
U.S. House of Representatives

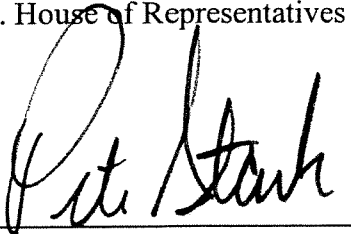
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Sherrod Brown
U.S. House of Representatives



Richard Durbin
United States Senate



Pete Stark
U.S. House of Representatives



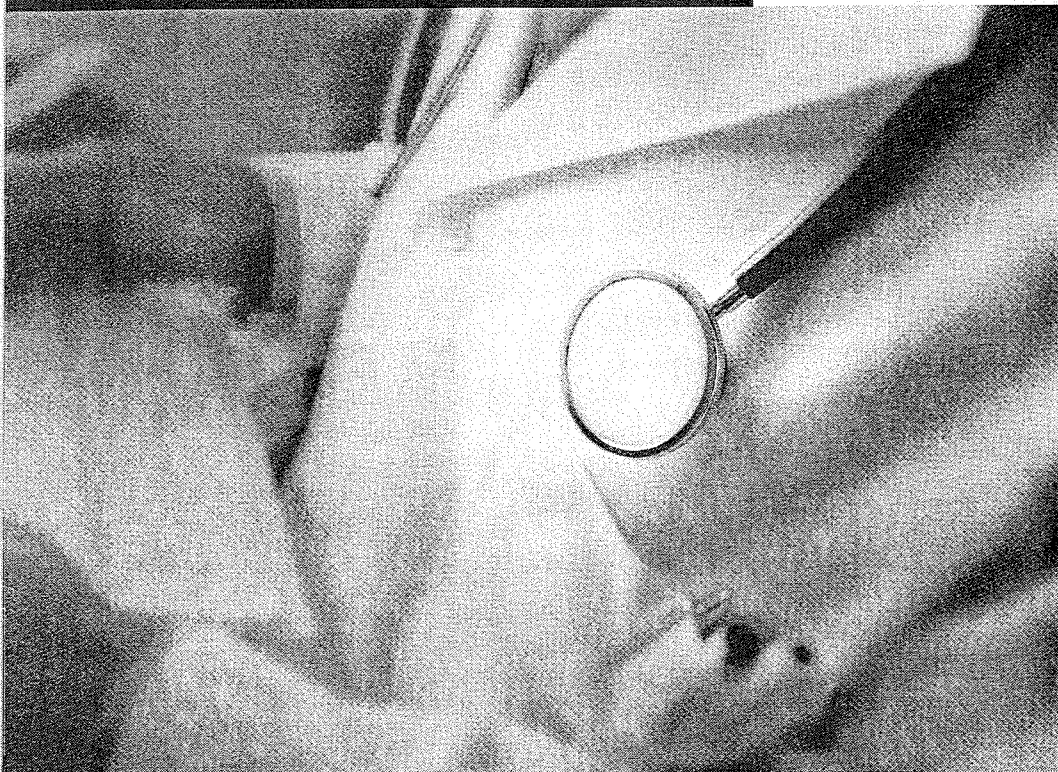
Benjamin Cardin
U.S. House of Representatives

Enclosures

Attachment 1:

MDVIP Brochure

VIP Access



MDVIPTM

PERSONALIZED SERVICE IN HEALTH CARE

WHAT IS MDVIP?

MDVIP HAS BEEN CREATED BY A TEAM OF HEALTHCARE AND BUSINESS PROFESSIONALS TO PROVIDE AN EXCLUSIVE COMPREHENSIVE PERSONALIZED MEMBERSHIP PROGRAM. YOUR MDVIP AFFILIATED PHYSICIAN OFFERS A NEW LEVEL OF ACCESS TO PERSONAL SERVICE AND RESPONSIVENESS TO HEALTHCARE NEEDS. EXPERIENCE THE BENEFITS OF PATIENT-FOCUSED HEALTHCARE AND UNPARALLELED ACCESS TO SERVICE FROM YOUR MDVIP AFFILIATED PHYSICIAN. AT MDVIP, WE WILL TRANSFORM THE TRADITIONAL PRACTICE THROUGH TRAINING, TECHNOLOGY AND INNOVATIVE NEW CONCEPTS. YOUR MDVIP AFFILIATED PHYSICIAN WILL LIMIT HIS OR HER PRACTICE TO A **MAXIMUM OF 600 PATIENTS.**

THE MDVIP MEMBERSHIP PROGRAM



SAME DAY OR NEXT DAY PREFERRED APPOINTMENTS

Your MDVIP affiliated physician will have a maximum of 600 patients (many physicians have as many as 2400 patients). Appropriately managing patient volume will enable your MDVIP affiliated physician to schedule most member appointments within 24 hours resulting in added convenience for your demanding schedule.

SUPPORT PERSONNEL DEDICATED EXCLUSIVELY TO MEMBERS

When you call your MDVIP affiliated physician, a trained medical assistant already familiar with you and your medical history will personally expedite your needs.

PHYSICIAN AVAILABILITY (24 X 7)

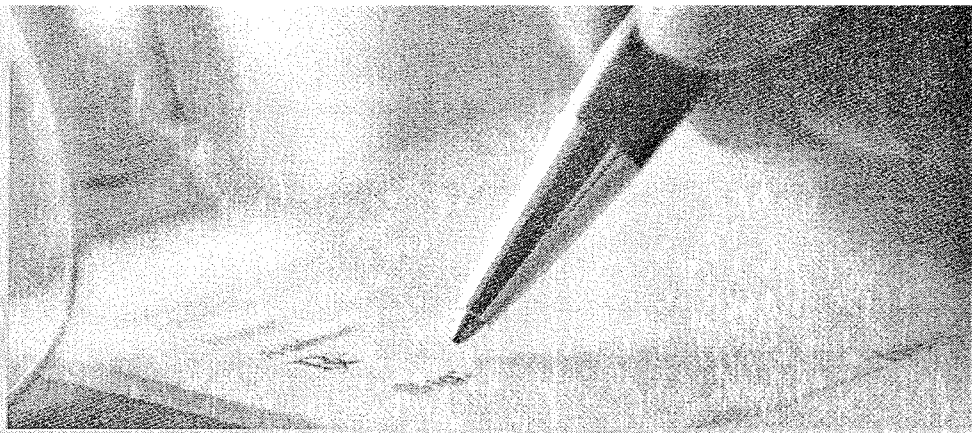
Your MDVIP affiliated physician believes that you should be able to talk to him or her when you need to, without going through the barriers that are common in today's typical busy practices. You will have special access telephone numbers to your personal medical assistant and your MDVIP affiliated physician. During business hours, a staff member will answer phones promptly. Your MDVIP affiliated physician will be available after hours by personal pager. When you leave a message, it will be handled promptly and the call will be returned in a timely manner.

COMPREHENSIVE PREVENTATIVE CARE PLAN

Your comprehensive care plan will include an annual physical and will cover your physical health, genetic history, a plan for future health maintenance, and counseling on stress, nutrition, and other environmental or lifestyle risks. In other words, you'll receive important tools you need to protect your most precious resource-your good health.

E-MAIL/FAX ACCESS

Your MDVIP affiliated physician will have a web site and a dedicated fax line that will allow you to send electronic messages. This tool is incorporated into the daily routine of the practice and provides enhanced access to your MDVIP affiliated physician regardless of where you are: at your home, in your office, or in a remote location.



PRESCRIPTION FACILITATION

MDVIP has trained your MDVIP affiliated physician's medical assistant to facilitate your new and refill prescription needs. During your office visit, new prescriptions will be called in to your preferred pharmacy. Should you require a refill for pickup, home or mail delivery, you can contact your medical assistant, who will help you in navigating the often times impersonal pharmacy experience. MDVIP can also arrange for both mail and home delivery of your regularly used medications.

COORDINATION OF NECESSARY REFERRALS

Your MDVIP affiliated physician will work to coordinate your healthcare needs with specialty physician practices (i.e. cardiologists, urologists, oncologists and radiologists, etc.). Your MDVIP affiliated physician's medical assistant, working directly with such specialty physician practices, will coordinate convenient appointments for you. Your MDVIP affiliated physician's medical assistant will also follow up on these visits and advise you of the results in a timely manner.

CLAIMS FACILITATION FOR MEMBERS

Insurance demands and resulting paperwork are frustrating and time-consuming processes facing physicians and patients. Should you require any help in dealing with your insurance carrier, MDVIP trained personnel will be able to help.

TRAVEL MEDICAL SERVICES

Medical preparedness for foreign travel requires detailed planning. Be sure to schedule an office visit four to six weeks prior to departure. Your MDVIP affiliated physician will review your travel itinerary, advise of the need for appropriate vaccinations and provide access to necessary clinical information should any emergency or unfortunate health-care crisis occur.

PRIVATE RECEPTION AREA REPLETE WITH AMENITIES

With fewer patients in the practice, waiting times should be held to a minimum. During these times a special reception area designed for your comfort and convenience will be available.

Making it Work UNIQUE QUALIFICATIONS

Your MDVIP affiliated physician is able to offer these services by capping his or her patient load at 600 patients. In many cases, this means that your MDVIP affiliated physician has started a new practice and, as part of such new practice, has reduced the number of patients that he or she treats by as much as 75%. Essentially, MDVIP affiliated physicians, staff and patients can now return to the old days of personalized patient care.

MDVIP Technology

MDVIP has created technology to aid your MDVIP affiliated physician in offering these special services to his or her patients. This technology is continually being updated and will soon include worldwide access to your personal medical records.

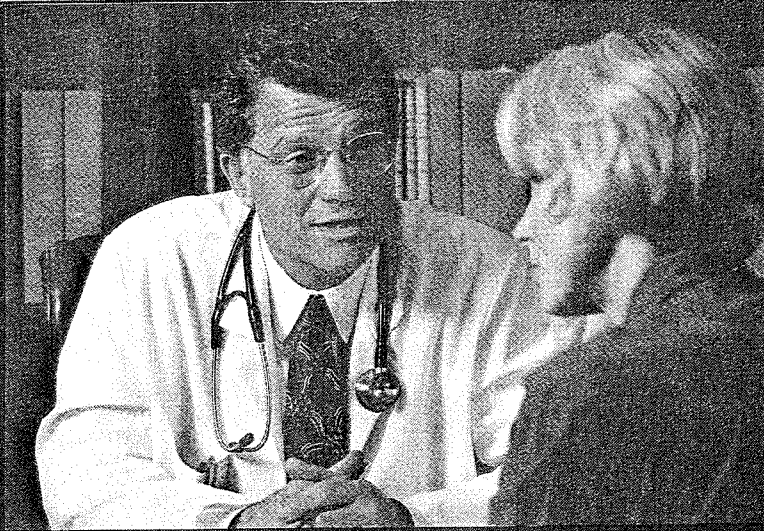
Membership CANDIDATES

This program has been designed and developed over the last year to satisfy the demands of patients who have asked for something better. Individuals who value access, prompt service, quality and time management are ideal candidates. MDVIP membership is completely confidential. For additional information, visit our home page at www.mdvip.com or call us at (561) 995-2546.

BECOME AN MDVIP Member

Simply complete the enclosed membership agreement and return it in the self-addressed envelope with a check made out to MDVIP. Should you require additional membership agreements, please go to our website at www.mdvip.com or call us. Please be reminded that each MDVIP affiliated physician will limit his or her patient load to 600 patients; for this reason, timing is important if you wish to become an MDVIP member. MDVIP's annual membership fee for these services is \$1500 per member per year.





WHAT YOUR Friends AND Neighbors ARE SAYING

"I never felt so secure with my medical needs."

"Two thumbs up! Joining MDVIP is one of the best decisions I will ever make for myself!"

"No more waiting and worrying - I get quick responses to all of my medical questions."

*"A full one-hour physical with my doctor plus 30-minute scheduled appointments.
Just the way I always thought it should be!"*

*"I never felt so good when I felt so bad. My doctor really cares and has time to give
the personalized service I want!"*

"24/7 access to my doctor and it works."

*"I was so surprised when the morning after my eye surgery, the doctor called to see
how I was doing. My doctor has the time to care!"*

MDVIPTM

PERSONALIZED SERVICE IN HEALTH CARE

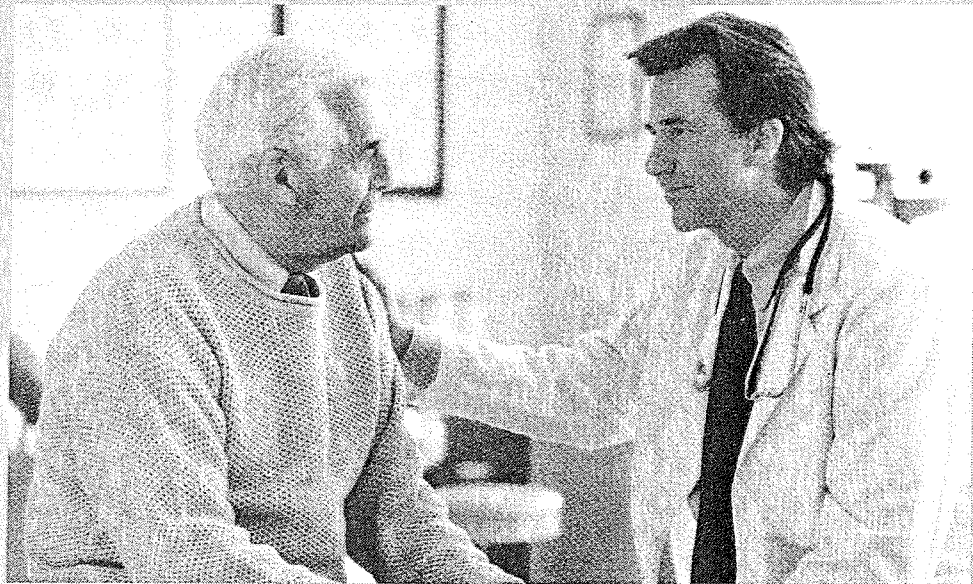
Physician

YOUR AFFILIATED MDVIP PHYSICIAN

Member Name

JOHN C. STEVENS

0123-4567



Membership SERVICES AT A GLANCE

- ANNUAL PHYSICAL EXAMINATION
- COMPREHENSIVE PREVENTATIVE CARE PLAN AND LIFESTYLE PLANNING
- SAME DAY OR NEXT DAY PREFERRED APPOINTMENTS
- SUPPORT PERSONNEL DEDICATED EXCLUSIVELY TO MEMBERS
- PHYSICIAN AVAILABILITY (24 X 7)
- E-MAIL/FAX ACCESS
- PRESCRIPTION FACILITATION
- COORDINATION OF NECESSARY REFERRALS
- CLAIMS FACILITATION FOR MEMBERS
- TRAVEL MEDICAL SERVICES
- PRIVATE RECEPTION AREA REplete WITH AMENITIES



6401 Congress Avenue, Suite 120 • Boca Raton, Florida 33487 • 561-995-2546 • www.mdvip.com

Attachment 2:

MDVIP Membership Agreement



PERSONALIZED SERVICE IN HEALTH CARE _____

MEMBERSHIP AGREEMENT

This Membership Agreement (the "Agreement") specifies the terms and conditions under which you, the undersigned member ("Member"), may participate in the MDVIP Program ("Program"). This Agreement will become effective as of the date set forth by MDVIP at the end of this Agreement (the "Effective Date").

1 MDVIP Program. The Program provides the following amenities ("Amenities") to persons who sign up as Members:

- Annual Physical Examination
- Comprehensive Preventive Healthcare Plan And Lifestyle Planning
- Same Day Or Next Day Preferred Appointments
- Support Personnel Dedicated Exclusively To Members
- Physician Availability (24 X 7)
- E-mail/Fax Access
- Prescription Facilitation
- Coordination Of Necessary Referrals
- Claims Facilitation For Members
- Travel Medical Services
- Private Reception Area Replete With Amenities

MDVIP will provide and/or make arrangements for Members to receive the Amenities through MDVIP and a physician who is participating in the MDVIP program ("Affiliated Physician"). The Amenities include both non-healthcare service amenities and health-related services usually not covered by insurance. Other service amenities may be offered from time to time, and these may be subject to limitations.

2 Affiliated Physician. Please provide MDVIP with the name of the MDVIP Affiliated Physician that you wish to designate as your physician: _____, M.D. You understand and acknowledge that physicians participating in the Program may change from time to time and that from time to time certain MDVIP Affiliated Physicians may no longer be able to accept new Members due to patient volume limits. If your designated MDVIP Affiliated Physician is no longer available, MDVIP will notify you of such unavailability and will refund your membership fee if you so desire.

3 Annual Membership Fee. Members will pay an annual fee to MDVIP. Please check the appropriate box for your desired membership status:

- Individual Membership: \$1,500 Couple Membership: \$3,000

MEMBER BILLING

INCLUDE YOUR PAYMENT ALONG WITH THE SIGNED MEMBERSHIP AGREEMENT IN THE ENCLOSED SELF-ADDRESSED ENVELOPE

Membership Billing. You will be billed the annual membership fee on a yearly basis. Please make the check payable to MDVIP.

Credit Card AMEX VISA MASTERCARD

Card Number _____ Expiration date _____

Name on Card _____

Signature _____

4 Renewals and Termination. The annual membership fee covers a period of one (1) year. Failure to pay the renewal annual membership fee within 30 days from the anniversary of the Effective Date shall result in termination of your membership in the Program. (For example, if the Effective Date is May 15th, 2001 then you must renew on or before June 14, 2002). You may terminate your participation at any time upon 30 days prior written notice to MDVIP. **If you terminate this Agreement for any reason, you will not be entitled to a refund of any unused portion of your annual membership fee.** MDVIP may terminate this Agreement at any time on 30 days written notice to you. If MDVIP terminates this Agreement for any reason, you will be entitled to a prorated refund of your annual membership fee. Such prorated refund will be based on the number of days you have participated in the Program. Upon MDVIP's receipt of this Agreement and the membership fee, MDVIP shall have the option, in its sole and absolute discretion, not to accept this Agreement and to return your payment to you (e.g., due to limitations on the number of Members).

5 Medical Care Services Excluded from Annual Membership Fee. The membership fees specified above cover only the defined MDVIP Amenities and the annual comprehensive physical examination and personalized preventive healthcare plan ("Physical Exam"). Except for your Physical Exam, you and/or your insurer, as the case may be, will be financially responsible for paying for all healthcare and medical care services received by you from your Affiliated Physician and his or her staff. Your Affiliated Physician will bill you and/or your insurer, as the case may be, for those medical or health care services provided to you.

- 6 Co-Payments.** The membership fee does not affect the co-payments, co-insurance or deductibles that you are required to pay pursuant to the terms of your insurance coverage. You will be financially responsible for any co-payments, co-insurance or deductible amounts required by your insurer.

INSURANCE INFORMATION

Insurance Policy Information (as printed on your I.D. card)

Social Security Number _____ Current Primary Care Physician _____

Company Name _____ Phone _____

Address _____ City _____ State _____ Zip Code _____

Policy Holder's Last Name _____ First _____ Middle Initial _____

Date of Birth _____ Policy Number _____ Group Name _____

Group Number _____

- 7 E-mail Communications; Privacy.** If you wish to send e-mail communications to and receive e-mail responses from your Affiliated Physician and/or his or her employees, agents and representatives, including MDVIP, you should be aware that e-mail is not a secure medium for sending or receiving potentially sensitive personal health information. Although MDVIP and each Affiliated Physician will take steps to keep your communications with MDVIP and/or the Affiliated Physician and/or their respective employees, agents and representatives, confidential and secure, the confidentiality of e-mail communications cannot be assured or guaranteed. You also acknowledge and understand that e-mail is not a good medium for urgent or time-sensitive communications. In the event a communication is time-sensitive, you must communicate with your Affiliated Physician by telephone or in person. You acknowledge and understand that, at the discretion of your Affiliated Physician, your e-mail may become part of your permanent medical record.
- 8 Consent.** You agree to complete and sign the attached Consent form.
- 9 Entire Agreement.** Each of the undersigned agrees to the terms of this Membership Agreement, all of which are expressed herein. There are no promises or representations except as set forth herein.
- 10 Notices.** Any communication required or permitted to be sent under this Membership Agreement shall be in writing and sent via facsimile or via certified mail, return receipt requested, to the addresses set forth below. Any change in address shall be communicated in accordance with the provisions of this section.
- 11 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

3 Annual Membership Fee. Members will pay an annual fee to MDVIP. Please check the appropriate box for your desired membership status:

- Individual Membership: \$1,500 Couple Membership: \$3,000

MEMBER BILLING

INCLUDE YOUR PAYMENT ALONG WITH THE SIGNED MEMBERSHIP AGREEMENT IN THE ENCLOSED SELF-ADDRESSED ENVELOPE

Membership Billing. You will be billed the annual membership fee on a yearly basis. Please make the check payable to MDVIP.

Credit Card AMEX VISA MASTERCARD

Card Number _____ Expiration date _____

Name on Card _____

Signature _____

4 Renewals and Termination. The annual membership fee covers a period of one (1) year. Failure to pay the renewal annual membership fee within 30 days from the anniversary of the Effective Date shall result in termination of your membership in the Program. (For example, if the Effective Date is May 15th, 2001 then you must renew on or before June 14, 2002). You may terminate your participation at any time upon 30 days prior written notice to MDVIP. **If you terminate this Agreement for any reason, you will not be entitled to a refund of any unused portion of your annual membership fee.** MDVIP may terminate this Agreement at any time on 30 days written notice to you. If MDVIP terminates this Agreement for any reason, you will be entitled to a prorated refund of your annual membership fee. Such prorated refund will be based on the number of days you have participated in the Program. Upon MDVIP's receipt of this Agreement and the membership fee, MDVIP shall have the option, in its sole and absolute discretion, not to accept this Agreement and to return your payment to you (e.g., due to limitations on the number of Members).

5 Medical Care Services Excluded from Annual Membership Fee. The membership fees specified above cover only the defined MDVIP Amenities and the annual comprehensive physical examination and personalized preventive healthcare plan ("Physical Exam"). Except for your Physical Exam, you and/or your insurer, as the case may be, will be financially responsible for paying for all healthcare and medical care services received by you from your Affiliated Physician and his or her staff. Your Affiliated Physician will bill you and/or your insurer, as the case may be, for those medical or health care services provided to you.

Attachment 3: Overlap Between Medicare Benefits and MDVIP “Amenities”

Among the “amenities” funded by the \$1,500 MDVIP annual fee are at least two services that seem to overlap with Medicare coverage: “coordination of necessary referrals” and “travel medical services.” The MDVIP brochure explains “coordination of necessary referrals” in this way:

“Your MDVIP affiliated physician will work to coordinate your healthcare needs with specialty physician practices (i.e. cardiologists, urologists, oncologists and radiologists, etc.). Your MDVIP affiliated physician’s medical assistant, working directly with such specialty physician practices, will coordinate convenient appoints for you. Your MDVIP affiliated physician’s medical assistant will also follow up on these visits and advise you of the results in a timely manner.”¹

This “exclusive” benefit, however, sounds strikingly similar to a Medicare covered service. Medicare pays physicians for care that meets the specifications in the diagnosis and management codes written by the American Medical Association (AMA).² These specifications include:

“time doing work before or after the face-to-face time with the patient, performing such tasks as reviewing records and tests, arranging for further services, and communicating further with other professionals and the patient through written reports and telephone contact.”³

“Arranging for further services” and “communicating further with other professionals” seem to overlap with MDVIP’s “coordination of necessary referrals” amenity.

MDVIP further promises its members that the “travel medical services” amenity means “your MDVIP affiliated physician will . . . provide access to necessary clinical information should any emergency or unfortunate health-care crisis occur.”⁴ But it is difficult to imagine any doctor who would not make necessary information available in a crisis, and the AMA service specification includes communications “with other professionals and the patient” about the care given. This benefit is paid for by Medicare.

In effect, MDVIP physicians seem to be charging for “coordination of necessary benefits” and “travel medical services” twice: once by billing Medicare for the visit, and once by requiring patients to pay the \$1,500 fee. Both charges should be counted against Congressionally mandated limits on what beneficiaries have to pay. For those physicians who sign up to accept the Medicare rates as payment

¹MDVIP, *VIP Access* (December 2001).

²See, e.g. 66 Federal Register 55334 (Nov. 1, 2001).

³American Medical Association, *Current Procedural Terminology*, 4 (2001).

⁴*Ibid.*

in full, any extra charges hidden in the annual fee appear to be illegal. For those who are allowed to charge up to 15% more than the Medicare rate, the total charges may also exceed this amount.